October Term, 1950.

No. 362

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES (a national banking association),

*Petitioner,*

vs.

COUNTY OF LOS ANGELES, a body corporate and politic, and CITY OF VERNON, a municipal corporation,

*Respondents.*

REPLY TO RESPONDENTS' ANSWER

W. SUMNER HOLBROOK, JR.,
740 Rowan Building, Los Angeles 13,

EDMUND NELSON,
919 James Oviatt Building, Los Angeles 14,

*Counsel for Petitioner.*

Parker & Company, Law Printers, Los Angeles, Phone MA. 6-9171.

## SUBJECT INDEX


PAGE

1. Decision of court below barred petitioner's recovery solely because it failed to take administrative steps to correct erroneous assessments of others..... 1

2. Determination as to whether this case presents a situation of exempt property is one of federal not state law..... 3

3. California procedure does not permit a board of equalization to separate an improvement assessment and levy on part thereof only general county and city taxes while levying on the remainder special assessment taxes as well..... 4

4. Petitioner could not have anticipated the new-found requirement of application before a board of equalization for relief in a case where no question of overvaluation was claimed nor have raised its due process contention before the filing of its petition for rehearing before the California Supreme Court.... 8

## TABLE OF AUTHORITIES CITED

### CASES


| | PAGE |
|---|---|
| Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U. S. 673 | 8 |
| City and County of San Francisco v. County of San Mateo, 95 A. C. A. 699, 213 P. 2d 505 | 8 |
| Hillsborough Township v. Cromwell, 326 U. S. 620 | 2 |
| Iowa-Des Moines National Bank v. Bennett, 284 U. S. 239 | 3 |
| People v. Dunn, 59 Cal. 328 | 5 |
| People ex rel. Pacific Mail S. S. Co. v. Board of Supervisors, 50 Cal. 282 | 6 |
| Sioux City Bridge Co. v. Dakota County, 260 U. S. 441 | 3 |
| Standard Oil Company of California v. Johnson, 316 U. S. 481 | 3 |


### STATUTES


| | |
|---|---|
| California Constitution, Art. XIII, Sec. 9 | 5 |
| California Motor Vehicle License Tax Act, Sec. 10 | 3 |
| California Revenue and Taxation Code, Sec. 1605 | 5 |
| California Revenue and Taxation Code, Sec. 1607 | 5, 6 |
| California Revenue and Taxation Code, Sec. 1611 | 6 |
| California Revenue and Taxation Code, Secs. 4946-4948 | 7 |
| California Revenue and Taxation Code, Sec. 5141 | 7 |
| United States Constitution, Fourteenth Amendment | 2 |
| United States Revised Statutes 5219 | 2 |

# In the Supreme Court of the United States

October Term, 1950.
No. 362

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES (a national banking association),

*Petitioner,*

*vs.*

COUNTY OF LOS ANGELES, a body corporate and politic; and CITY OF VERNON, a municipal corporation,

*Respondents.*

## REPLY TO RESPONDENTS' ANSWER.

Certain contentions made in Respondents' Answer require brief reply.

**1. Decision of Court Below Barred Petitioner's Recovery Solely Because It Failed to Take Administrative Steps to Correct Erroneous Assessments of Others.**

The Answer erroneously asserts (p. 6) that the decision below is expressly based upon Petitioner's found failure to pursue the claimed statutory remedy of "application to the County Board of Equalization for reduction of assertedly erroneous assessment." The court below stated that the nature of the administrative relief which it found Petitioner failed to exhaust was correction of assessments of "misclassified" fixtures owned by *others* erroneously assessed as *personal property*. It said [R. 126]:

> "In fact, the board of equalization could have eliminated the discrimination by directing the assessor to enter the misclassified fixtures owned by others as real property upon the assessment roll (Rev. & Tax. Code, §1611), in which case plaintiff would not be

> excused from paying, or entitled to recover, the special district taxes. Plaintiff's failure to make timely application for relief before the board precluded the adoption of that means of equalization."

Denial herein to Petitioner of its otherwise admitted right to recover in part, at least, discriminatorily levied taxes on national bank fixtures in violation of R. S. 5219 and the Fourteenth Amendment was wholly rested by the California Court upon Petitioner's failure to compel local taxing officials to assess correctly as improvements fixtures owned by other taxpayers[1] and thus remove the discrimination which is the foundation of Petitioner's claim of denial of its Federal rights. The decision below thus adopts in California the New Jersey administrative rule discussed and found federally insufficient in *Hillsborough Township v. Cromwell,* 326 U. S. 620. There the petitioning taxpayer had been taxed on intangibles in strict accord with valid state statute. However, because of general disregard of such statute, no other intangibles were taxed in the township. Such was held by this Court to constitute a denial of equal protection of the law under the Fourteenth Amendment irrespective of failure of the taxpayer administratively to seek taxation of the other intangibles. It said at page 623:

> "The constitutional requirement, however, is not satisfied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class."

---

[1]This would have required administrative change for at least 31,000 larger taxpayers whose assessed valuation of trade fixtures, machinery and equipment, in large part held by the court to have been "improvements" for the purposes of taxation, amounted to 21% of their aggregate personal property assessments [R. 81].

This Court thereupon affirmed a declaratory judgment declaring Cromwell's assessment invalid and thus, in effect, exempted his intangibles from local taxation. To the same effect are: *Sioux City Bridge Co. v. Dakota County,* 260 U. S. 441, 445-447; *Iowa-Des Moines National Bank v. Bennett,* 284 U. S. 239, 247.

**2. Determination as to Whether This Case Presents a Situation of Exempt Property Is One of Federal Not State Law.**

The Answer (pp. 7-11) erroneously asserts that whether or not this case falls under the "exception" to the state administrative rule pronounced by the court below, that application to the board of equalization need not be made if the property is "tax exempt" or "outside the jurisdiction," is a matter upon which the determination of the state court must control.

Such contention is contrary to the decision on similar facts in *Standard Oil Company of California v. Johnson,* 316 U. S. 481, 483. In that case this Court had before it for determination whether gasoline sold to army post exchanges in California fell within the provisions of Section 10 of the Motor Vehicle License Tax exempting "fuel sold to the Government of the United States or any department thereof for official use of said Government." The California Supreme Court had held that a post exchange was not an agency of the United States and, therefore, the sales were not "exempt." In holding such decision presented a question of Federal law upon which the state court's ruling was not controlling, this Court said at page 483:

> "If the court's construction of Section 10 of the Act had been based purely on local law, this construction would have been conclusive, and we should have to

> determine whether the statute so construed and applied is repugnant to the federal constitution. But in deciding that post exchanges were not 'the government of the United States or any department thereof,' the court did not rely upon the law of California. On the contrary, it relied upon its determination concerning the relationship between post exchanges and the government of the United States, a relationship which is controlled by federal law. . . . It was upon a determination of a federal question, therefore, that the Supreme Court of California rested its conclusion that, by Section 10, sales to post exchange were not exempted from the tax. Since this determination of a federal question was by a state court, we are not bound by it."

Similarly in this case the question, as to whether an asserted right of California to tax national bank fixtures as real property, when all other fixtures were held by it to have been classified as personal property, raises a question of "tax exempt" property or property "outside the jurisdiction" of California to tax within the exception to the state administrative rule requiring application to a board of equalization, is one of a Federal law reviewable by this Court irrespective of the state decision below.

**3. California Procedure Does Not Permit a Board of Equalization to Separate an Improvement Assessment and Levy on Part Thereof Only General County and City Taxes While Levying on the Remainder Special Assessment Taxes as Well.**

Under decisions of this Court (*supra*, pp. 1-2) a state cannot deny to a taxpayer recovery of taxes, invalid upon Federal grounds, simply because he did not take administrative steps to bring about upward revision of the assessments of other taxpayers. Such, however, was the express ground upon which the California court below

barred Petitioner's recovery herein. The Answer (pp. 14-15) attempts to avoid necessary consequences of this statement of position by contending (as was not done by the California Supreme Court) that *if* Petitioner had applied to the Board of Equalization for relief it could, "by reducing Petitioner's building assessment," have achieved "equalization" as ordered in the *Simms Case.*

Such assertion completely misconceives the nature of California equalization procedure. "Equalization," as the word implies, means to equalize *valuations* of taxable property already listed on the assessment roll by making them conform to true values. *People v. Dunn,* 59 C. 328 (1881). No question of *disproportionate valuation* is involved in this proceeding [R. 60]. "Equalization" in this sense is the *only* power granted by state constitution[2] or statute[3] to a board of equalization to review assessments.

By state statute *all* property assessed as "improvements" must carry *all* improvements taxes, including "special assessment taxes." Any reduced valuation of Petitioner's improvement assessment (to compensate for discriminatorily included bank fixtures) would necessarily carry all improvement taxes, including special assessment taxes. Reduction of valuation would not remove from the subject matter of the assessment the included bank fixtures; but to the extent the valuation was reduced all taxes, including general, city and county taxes, would be reduced.

But the gist of the decision in the court below was that both assessment of and taxes levied on Petitioner's building assessment, including the bank fixtures, were in strict accord with state statute.

---

[2]Cal. Const. Art. XIII, Sec. 9. For text, see Pet., App. A, p. 2.
[3]R. & T. C., Sec. 1605, 1607. For text, see Ans., App. pp. 2-3.

Additional statutory authority (R. & T. C., Sec. 1611)[4] granted to the board only permits it, upon its own motion but after investigation, to order the *assessor* to cancel an assessment which, as made, renders "doubtful" collection of a tax later to be levied thereon. The board itself has *no direct power* to cancel, or separate, an assessment under any circumstances. Its attempt so to do would be a nullity. *People ex rel. Pacific Mail S. S. Co. v. Board of Supervisors,* 50 C. 282 (1875). On the contrary, action taken by an assessor pursuant to instructions under Section 1611 is merely to enter a new assessment as if originally and legally made by him in the first instance. Section 1611 is thus only one mode of instituting a re-assessment.

The California statute expressly provides machinery for a taxpayer to secure a reduction in *valuation* of his own assessment.[5] No procedure is given him to initiate a cancellation (or reassessment) proceeding by the assessor under Section 1611. Petitioner's right so to do was denied before the board by Respondents' counsel [R. 173-174], and is again denied in their Answer (p. 15).

The California Supreme Court in its decision herein was therefore correct in asserting that, under Section 1611, the *only* procedure by which Petitioner's building assessment including the bank fixtures (and all improvements taxes later levied thereon) could be sustained and Petitioner's federal rights to equal treatment be preserved, was for the Board to order re-assessments as to all other taxpayers whose fixtures had been "misclassified" as personal property. But, to require Petitioner to have taken administrative steps so to do, would have

---

[4]For text, see Pet., App. A, p. 3.
[5]R. & T. C. Sec. 1607.

required it to have sought upward revision of the assessments of others, a burden which this Court has held a state can not impose upon a taxpayer in order to secure his federal rights.

Actually the tax result reached in the judgment ordered in the *Simms Case* could never have been accomplished administratively by a California assessor, board of equalization, or other official. It represents nothing more than the California court's view of "policy." Judgment as ordered therein provides for separation of each *improvement* assessment (without declaring it to be "void" and a nullity) and extends *personal property taxes* only against a *part* thereof (assumed to represent bank fixtures) and leaves subject to *all improvement taxes,* including special assessment taxes, the *remainder* of the *improvement* assessment. Such result is utterly impossible of administrative accomplishment under California statute.

The statutory rule that only improvement taxes shall be extended against improvement assessments, and only personal property taxes against personal property assessments, is one of the reasons for the requirement in the state judgment statute that the successful taxpayer thereunder shall recover judgment for *all* taxes collected upon a void assessment[6] and also for the provision in the reassessment statute[7] of authorization to public bodies, after such a judgment, to reassess, any part of the property which can subsequently be validly assessed under the same or different tax classification. Unconstitutional withholding of such statute-required judgment by the decision of the California Supreme Court constitutes the denial of due process of law complained of in the *Simms Case.*

---

[6]R. & T. C. Sec. 5141. For text see Pet., App. A, p. 5.
[7]R. & T. C., Sec. 4946-4948. For text see Pet., pp. 5-7.

**4. Petitioner Could Not Have Anticipated the New-Found Requirement of Application Before a Board of Equalization for Relief in a Case Where No Question of Overvaluation Was Claimed nor Have Raised Its Due Process Contention Before the Filing of Its Petition for Rehearing Before the California Supreme Court.**

The Answer (pp. 15-20) concedes that a proper showing of denial of due process of law in violation of the Fourteenth Amendment has been made out by Petitioner herein under the rule of *Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U. S. 673, 678, except that: (1) Petitioner should have known that it was required to make preliminary application to the Board of Equalization for correction of the erroneous assessments of others; and (2) that Petitioner, in raising its due process point for the first time on re-hearing before the State Supreme Court, lacked the "surprise" element required to make such initial raising of a federal question "timely."

The former state of California law, contradicting both contentions, is evidenced by decision of the District Court of Appeal rendered on January 17, 1950, in *City and County of San Francisco v. County of San Mateo,* 95 A. C. A. 699, 213 P. (2d) 505, when it said:

> "Questions of valuation are the only matters properly brought before a board of equalization, whether State or County (see Judicial Review of Determinations by County Boards of Equalization, by W. Sumner Holbrook, Jr., 14 So. Cal. L. Rev. 276, 277) and it is well settled that where the taxpayer complains of an overvaluation of his property he must first seek relief from the Board of Equalization before applying to the courts. . . .

"Since 1911, however, our courts have recognized that there is a distinction between 'the mere overvaluation of property in an assessment thereof, and the inclusion in such an assessment of property not taxable at all.' Brenner v. Los Angeles, 160 Cal. 72, 76, 116 P. 397, 399; see, also, . . . While the courts have uniformly held that the administrative remedy must be pursued before recourse may be had to the courts in overvaluation cases, no such requirement exists in the case where exempt property has been assessed."

It was not until hearing was granted by the State Supreme Court therein, on March 16, 1950, long after this case had been submitted to the California Supreme Court, that there was any indication in California that preliminary application to a board of equalization was required in a case presenting no question of valuation.

Under such circumstances, Petitioner could not have anticipated the change of the thirty-nine-year rule of decision made in this case. Such *new* rule was retroactively applied to Petitioner under circumstances as to which Petitioner could not satisfy its requirements. Its adoption justifiably constituted a "surprise" to Petitioner. Presentation of Petitioner's new Federal injury for the first time on petition for rehearing in the court below was therefore timely. Under Respondents' own contentions, the Petition herein thus presents a case of denial of due process of law.

Respectfully submitted,

W. Sumner Holbrook, Jr.,
Edmund Nelson,
*Counsel for Petitioner.*